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6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

9
10 MELVIN JONES JR,

11 Plaintiff(s);

12 V.

13 14 MICHAEAL A. TOZZI, ET AL.,

15 Defendant(s).

16 NO.1:05-CV-00148-AWI-DLB

17 ORDER SETTING MANDATORY
18 SCHEDULING CONFERENCE

19 DATE: May 10, 2005

20 TIME: 08:45 AM

21 COURTROOM: #5 (3rd Floor)

22 DENNIS L. BECK
23 U.S. MAGISTRATE JUDGE

24
25 Rule 16, F.R.Civ.P., requires the Court to enter a Scheduling
26 Conference Order within 120 days of the date of the Complaint being
27 served upon the defendant. Therefore, it is ordered that you
28 appear for a formal Scheduling Conference before the United States
Magistrate Judge Dennis L. Beck, in Courtroom 5 at the United
States Courthouse, 1130 "O" Street, Fresno, CA 93721.

1 The Court is unable to conduct a scheduling conference until
2 defendants have been served with the summons and complaint.
3 Accordingly, plaintiff(s) shall diligently pursue service of
4 summons and complaint and dismiss those defendants against whom
5 plaintiff(s) will not pursue claims. Plaintiff(s) shall promptly

1 file proofs of service of the summons and complaint so the Court
2 has a record of service. Counsel are referred to F.R.Civ.P., Rule 4
3 regarding the requirement of timely service of the complaint.

4 Failure to timely serve summons and complaint may result in the
5 imposition of sanctions, including the dismissal of unserved
6 defendants.

7 Due to the mandates of Rule 16, this Order may be served upon
8 counsel for the plaintiff(s) before appearances of defendant(s) are
9 due. It is the obligation of counsel for the plaintiff(s) to serve
10 a copy of this Order on the defendant(s), or, if identified, on
11 their counsel, **promptly** upon receipt of this Order, and to file an
12 appropriate proof of such service with the Court, in compliance
13 with Rule 5-135(a) of the Local Rules of Practice for the Eastern
14 District of California.

15 Attendance at the Scheduling Conference is *mandatory* upon each
16 party not represented by counsel or, alternatively, by retained
17 counsel. Only counsel who are thoroughly familiar with the facts
18 and the law of the instant case, and who have full authority to bind
19 his or her client, shall appear. Trial counsel should participate
20 in this Scheduling Conference whenever possible. It may be
21 necessary for counsel to spend as much as 45 minutes in this
22 Conference.

23 A Joint Scheduling Report (formerly known as the Joint Status
24 Report), carefully prepared and executed by all counsel, shall be filed
25 with the Clerk of the Court, in full compliance with the requirements
26 as set forth below, one(1) full week prior to the Scheduling
27 Conference, and shall be accompanied with a digital copy of the
28 Joint Scheduling Report, on a 3 1/2" computer disc, preferably

2 unless the parties so request, and a self-addressed stamped mailing
3 container or envelope is provided.

4 For reference purposes, the Court requires that counsels'
5 Joint Scheduling Report indicate the date, time, and courtroom of
6 the Scheduling Conference opposite the caption on the first page of
7 the Report.

8 Among other things, counsel will be expected to discuss the
9 possibility of settlement. Counsel are to thoroughly discuss
10 settlement with each other before undertaking the preparation of
11 the Joint Scheduling Report and engaging in extensive discovery.
12 However, even if settlement negotiations are progressing, counsel
13 are expected to comply with the requirements of this Order unless
14 otherwise excused by the Court. If the case is settled, please
15 **promptly** inform the Court, and counsels' presence, as well as the
16 Joint Scheduling Report, will not be required.

17 Counsel may request that their attendance be by telephonic
18 conference. If two or more parties wish to appear telephonically,
19 counsel shall decide which will be responsible for making prior
20 arrangements for the conference call and shall initiate the call at
21 the above-designated time. After all parties are on the line, the
22 call should then be placed to Judge Beck's chambers at (559) 498-
23 7537. Additionally, counsel are directed to indicate on the
24 face page of their Joint Scheduling Report that the conference
25 will be telephonic.

26 At least twenty (20) days prior to the Mandatory Scheduling
27 Conference, the actual trial counsel for all parties shall conduct
28 and conclude a conference at a time and place arranged by counsel

1 for the plaintiff(s). This conference should preferably be a
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3 personal conference between all counsel but, due to the distances
4 involved in this District, a telephonic conference call involving
5 all counsel is permissible. The Joint Scheduling Report Shall
6 respond to the following items by corresponding numbered
paragraphs:

7 **Form and Contents of the Joint Scheduling Report**

8 1. Summary of the factual and legal contentions set forth in
9 the pleadings of each party, including the relief sought by any
10 party presently before the Court.

11 2. Any proposed amendment to the pleadings presently on file
12 shall be filed by its proponent contemporaneously with the
13 Scheduling Conference Report. If the matter cannot be resolved at
14 the Scheduling Conference, the matter will be set as a Motion to
15 Amend in accordance with the Rules of Practice of the Eastern
16 District of California. A proposed deadline for amendments to
17 pleadings.

18 3. A summary detailing the uncontested and contested facts.

19 4. A summary of the legal issues as to which there is no
20 dispute, i.e., jurisdiction, venue, applicable federal or state
21 law, etc., as well as a summary of the disputed legal issues.

22 5. The status of all matters which are presently set before
23 the Court, i.e., hearing all motions, etc.

24 6. A complete and detailed discovery plan addressing the
25 following:

26 (a) A date for the exchange of initial disclosures
27 required by Fed.R.Civ.P. 26(a)(1) or a statement that
28 disclosures have already been exchanged;

2 (c) A firm date(s) for disclosure of expert witnesses as

3 required by Fed.R.Civ.P. 26(a)(2);

4 (d) firm cut-off date for expert witness discovery;

5 (e) Any proposed changes in the limits on discovery

6 imposed by Fed.R.Civ.P. 26(b); 30(a)(2)(A), (B) or (C);

7 30(d); or 33(a)

8 (f) Whether the parties anticipate the need for a
protective order relating to the discovery of information

9 relating to a trade secret or other confidential

10 research, development, or commercial information;

11 (g) Any issues or proposals relating to the timing;
sequencing, phasing or scheduling of discovery;

12 (h) Whether the parties anticipate the need to take
discovery outside the United States and if so a
description of the proposed discovery;

13 (i) Whether any party anticipates video and/or sound
recording of depositions;

14 (j) A proposed date for a Mid-Discovery Status Report and
Conference;

15 7. Discovery relating to Electronic, Digital and/or Magnetic

16 data.

17 Prior to a Fed.R.Civ.P. 26(f) conference, counsel should
carefully investigate their client's information management system
so that they are knowledgeable as to its operation, including how
information is stored and how it can be retrieved. Likewise,
counsel shall reasonably review the client's computer files to
ascertain the contents thereof; including archival and legacy data

1 (outdated formats or media) and disclose in initial discovery
2 (self-executing routine discovery) the computer based evidence
3 which may be used to support claims or defenses.

4 (A) Duty to Notify. A party seeking discovery of
5 computer-based information shall notify the opposing party
6 immediately, but no later than the Fed.R.Civ.P. 26(f) conference of
7 that fact and identify as clearly as possible the categories of
8 information which may be sought.

9 (B) Duty to Meet and Confer. The parties shall meet and
10 confer regarding the following matters during the Fed.R.Civ.P.
11 26(f) conference:

12 (i) Computer-based information (in general) .

13 Counsel shall attempt to agree on steps the parties will take to
14 segregate and preserve computer-based information in order to avoid
15 accusations of spoliation;

16 (ii) E-mail information . Counsel shall attempt to
17 agree as to the scope of e-mail discovery and attempt to agree upon
18 an e-mail search protocol. This should include an agreement
19 regarding inadvertent production of privileged e-mail messages.

20 (iii) Deleted information . Counsel shall confer and
21 attempt to agree whether or not restoration of deleted information
22 may be necessary, the extent to which restoration of deleted
23 information is needed, and who will bear the costs of restoration;
24 and

25 (iv) Back-up data Counsel shall attempt to agree
26 whether or not back-up data may be necessary, the extent to which
27 backup data is needed and who will bear the cost of obtaining back-
28 up data.

conference relating to discovery of electronic data.

8. Dates agreed to by all counsel for:

(a) Filing non-dispositive¹ and dispositive² pre-trial motions with the understanding that motions (except motions in *limine* or other trial motions) will not be entertained after the agreed upon date. (No later than 10 weeks prior to the proposed Pre-Trial Conference date.)

(b) Pre-Trial Conference date. (No later than 45 days prior to the proposed trial date.)

(c) Trial date.

All of these dates should be considered firm dates.

Dates should be set to allow the court to decide any matters under submission before the Pre-Trial Conference is set.

9. At the conference referred to above, counsel are encouraged to discuss settlement, and the Court will expect a statement in the Joint Scheduling Report as to the possibility of settlement. Counsel shall indicate when they feel a settlement conference is desired, i.e., before further discovery, after discovery, after pre-trial motions, etc.

10. A statement as to whether the case is a jury or non-jury case. If the parties disagree as to whether a jury trial has been timely demanded or whether one is available on some or all of the claims, the statement shall include a summary of each party's

27 ¹Motions to compel discovery, amend, remand, etc.

28 ²Motions for summary adjudication or to dismiss, strike, etc.

2 11. An estimate of the number of trial days required. When
3 counsel cannot agree, each party shall give his or her best
4 estimate. In estimating the number of trial days counsel should
5 keep in mind that this court is normally able to devote the entire
6 day to trial.

7 12. Because the District Judges' dockets are extremely
8 crowded dockets the parties should consider and address the issue
9 of whether they are willing to consent to the jurisdiction of a
10 U.S. Magistrate Judge pursuant to 28 U.S.C. section 636(c). All
11 non-dispositive motions are routinely heard by the Magistrate Judge
12 whether or not the parties consent.

13 13. Whether either party requests bifurcation or phasing of
14 trial or has any other suggestion for shortening or expediting
15 discovery, pre-trial motions or trial.

16 14. Whether this matter is related to any matter pending in
17 this court or any other court, including any bankruptcy court.

18 15. Joint Scheduling Reports are to be submitted with an
19 additional copy, on 3½" computer disc, preferably formatted for
20 WordPerfect 11.

21 **SHOULD COUNSEL OR A PARTY APPEARING PRO SE FAIL TO APPEAR AT**
22 **THE MANDATORY SCHEDULING CONFERENCE, OR FAIL TO COMPLY WITH THE**
23 **DIRECTIONS AS SET FORTH ABOVE, AN EX PARTE HEARING MAY BE HELD AND**
24 **JUDGMENT OF DISMISSAL, DEFAULT, OR OTHER APPROPRIATE JUDGMENT MAY**
25 **BE ENTERED, OR SANCTIONS, INCLUDING CONTEMPT OF COURT, MAY BE**
26 **IMPOSED AND/OR ORDERED**

27 UNITED STATES MAGISTRATE JUDGE

28 DENNIS L. BECK